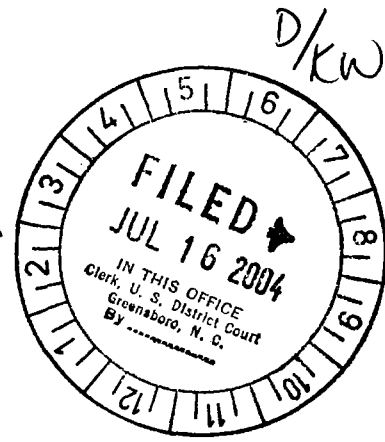


26

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



MR. KENACE FITZGERALD WRIGHT, )

Plaintiff, )

v. )

Case No. 1:03CV109

DURHAM COUNTY SHERIFF WORTH )

HILL; OFFICER JACK CATES; )

OFFICER ANTHONY SMITH; )

and DR. MICHAEL BOWEN, )

Defendants. )

MEMORANDUM OPINION

TILLEY, District Judge

The parties in this matter dispute the liability of various law enforcement personnel for injuries sustained by Mr. Wright in the course of his arrest and detainment at the Durham County Jail. This matter is currently before the Court on Defendant Hill's Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). [Doc. #23]. For the reasons set forth below, Defendant's Motion to Dismiss will be GRANTED.

I.

The facts alleged in the Amended Complaint are as follows. Plaintiff Kenace Fitzgerald Wright suffered a medical injury in September of 1997 when, in the course of his arrest, Officers Jack Cates and Anthony Smith threw him down on a picnic table and put their weight on his back. Mr. Wright was taken into custody

and held at the Durham County Jail, where Mr. Wright complained of “numbness, tingling in [his] left leg, foot and hand,” and pain in his neck and back. He asked jail officials for permission to see a neurologist, but officials denied permission for two weeks.

Mr. Wright’s only medical treatment at the jail facility included a medical examination and aspirin. He stated that his family tried to visit him in the jail to check on his medical condition, but that jail officials either denied them access or made excuses about the elevator being broken to keep the family away. Mr. Wright’s family members tried to speak with Sheriff Worth Hill about their concerns for Mr. Wright’s health, but the family was asked to come back another time.

Mr. Wright was eventually provided medical treatment, but he alleges that he is now “handicapped and in a wheel chair and on disability.” He claims that his injuries were aggravated by Dr. Michael Bowen at the Durham County Jail and Sheriff Hill, both of whom failed to ensure that Mr. Wright received proper medical care.

Mr. Wright first filed suit in this Court on September 19, 2000,<sup>1</sup> alleging violations of 42 U.S.C. § 1983 and seeking damages for his injuries in the amount of \$309,000,230.97. The suit was dismissed without prejudice on March 4, 2002 for failure to timely serve the proper defendants. Mr. Wright was allowed one year to re-file his suit, and he filed the instant action on January 31, 2003. The new

---

<sup>1</sup>Case Number 1:00CV922.

Complaint was a photocopy of his earlier Complaint, with the addition of a few handwritten changes. Although Mr. Wright was not in custody at the time of filing, the Complaint was on a form designated for use by prisoners bringing suit under 42 U.S.C. § 1983. Sheriff Hill moved to dismiss the action for lack of jurisdiction and sought judgment on the pleadings. Defendant Smith also moved for dismissal.

On February 2, 2004, this Court issued a Memorandum Opinion in response to the pending motions to dismiss. However, instead of addressing the substance of these motions, this Court allowed Mr. Wright thirty days to file an Amended Complaint correcting the numerous procedural problems with his Complaint. Specifically, Mr. Wright was instructed to file a “single document”<sup>2</sup> that “should describe in separate numbered paragraphs the specific conduct by the Defendants about which Mr. Wright is complaining and the claims which Mr. Wright is asserting against each of the Defendants.”

Mr. Wright filed an Amended Complaint on March 3, 2004. The Amended Complaint is in three separate parts, each with its own heading and signature page. One part of the Amended Complaint is addressed to Sheriff Hill, one part is addressed to Dr. Bowen, and one part is addressed to Officers Cates and Smith. Each part appears to be a separate complaint in and of itself, but given Mr.

---

<sup>2</sup>Mr. Wright’s original Complaint was accompanied by several separate documents and narratives.

Wright's pro se status and continued efforts to amend his complaints the Amended Complaint will be considered. Sheriff Hill timely filed a Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons stated below, Sheriff Hill's Motion to Dismiss will be GRANTED.

## II.

Sheriff Hill first argues that Mr. Wright's Amended Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) because Mr. Wright has not specifically alleged the basis for this Court's jurisdiction. However, previous complaints were filed on a form specifically designated for use in cases brought pursuant to 42 U.S.C. § 1983. When Mr. Wright was ordered to re-file his Complaint without using the form, he did not specify the statutory basis for jurisdiction. It remains obvious, however, that he is claiming each Defendant violated one or more of his constitutional rights under color of state law. Because Mr. Wright is pro se, and the federal jurisdictional basis for his Amended Complaint is obvious, it is determined that this Court has federal question jurisdiction to consider the merits of his constitutional deprivation claims against Sheriff Hill.

## III.

Sheriff Hill next argues that the Amended Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) because it fails to state any state or federal claim against him. A Rule 12(b)(6) motion should be granted only if, after accepting all well-pleaded allegations in the complaint as true, it appears

certain that a plaintiff cannot prove any set of facts in support of his claims that entitles him to relief. Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999). A complaint should not be dismissed unless it is certain that a plaintiff is not entitled to relief under any legal theory that might plausibly be suggested by the facts alleged. Mylan Labs., Inc. v. Matkari, 7 F.3d 1130, 1134 (4th Cir. 1993). The Fourth Circuit has stated that "[u]nder the liberal rules of federal pleading, a complaint should survive a motion to dismiss if it sets out facts sufficient for the court to infer that all the required elements of the cause of action are present." Wolman v. Tose, 467 F.2d 29, 33 n.5 (4th Cir. 1972); see also, Dickson v. Microsoft Corp., 309 F.3d 193, 213 (4th Cir. 2002) (holding that it is a plaintiff's burden "to set forth facts sufficient to allege each element of his claim").

Because the basis for this Court's jurisdiction stems from 42 U.S.C. § 1983, the 12(b)(6) analysis will begin by examining whether Mr. Wright has stated a claim against Sheriff Hill under § 1983. There are essentially two elements to a claim brought under 42 U.S.C. § 1983: (1) The defendant deprived the plaintiff of a right or privilege secured by the Constitution and federal laws; and (2) the deprivation was done under color of state law. Monroe v. Pape, 365 U.S. 167 (1961). Claims pursuant to § 1983 may be brought against governmental entities, and against individual government actors in either their official or individual capacities.

Any actions allegedly taken, or not taken, by Sheriff Hill in his care of a

county prisoner were taken under color of state law. Acting under color of state law generally means acting through powers "made possible only because the wrongdoer is clothed with the authority of state law." West v. Atkins, 487 U.S. 42, 49 (1988) (citing United States v. Classic, 313 U.S. 299, 326 (1941)). A public employee is generally acting under color of state law when he is "exercising his responsibilities pursuant to state law." Id. The police function is "one of the basic functions of government," a "most fundamental obligation of government to its constituency." Foley v. Connelie, 435 U.S. 291, 297 (1978).

As to the second element required for a valid § 1983 claim, the issue is whether the Amended Complaint sets out facts from which it may be inferred that Sheriff Hill deprived Mr. Wright of any federal constitutional rights. While the Amended Complaint does not specifically enumerate any federal constitutional violations committed by Sheriff Hill, this Court will assume that Mr. Wright is attempting to state a claim for violation of the Eighth Amendment's "cruel and unusual punishment" clause.

A plaintiff may maintain a § 1983 claim for cruel and unusual punishment in his prison-issued medical care only by alleging and showing more than mere accident, negligence or malpractice on the part of the prison staff. Estelle v. Gamble, 429 U.S. 97, 105-06 (1976). The plaintiff must show that the defendants were deliberately indifferent to a serious medical condition. Id.

Because it is unclear from the Complaint whether Mr. Wright is bringing § 1983 claims against Sheriff Hill in his official or individual capacities, both possibilities will be discussed below.

A.

Section 1983 claims brought against defendants in their official capacities constitute claims against the entity of which those officials are agents, here a municipal entity. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). To state a claim against a municipal entity, a plaintiff must allege facts to support a finding that: (1) officials who, under state law, have final policymaking authority for that entity (2) officially sanctioned or ordered the acts. Dotson v. Chester, 937 F.2d 920, 924 (4th Cir. 1991). In other words, the plaintiff must allege that an official policy<sup>3</sup> of that entity, as ordered by someone with the authority to speak for that entity, led to the violation of his rights. Carter v. Morris, 164 F.3d 215, 218 (4th Cir. 1999).

The section of the Amended Complaint addressed to "Mr. or Mrs. Worth Hill (Sheriff)" contains the following allegations:

---

<sup>3</sup>An official policy may include: an express oral or written policy; decisions of a person with final policymaking authority; an omission, such as a failure to properly train officers, that "manifest[s] deliberate indifference to the rights of citizens;" or a practice that is so "persistent and widespread" as to constitute a "custom or usage with the force of law." Carter v. Morris, 164 F.3d 215, 217 (4th Cir. 1999).

- I(1)<sup>4</sup> I'm accusing you of failing to assess the situation and take the proper action to get your medical staff to do what was obvious to all and that was allow me, Mr. Wright, to get the proper neurological care I requested on your jail's grievance forms!
- I(3) Your medical staff and jail detention staff lacked your directing them to take proper precaution to prevent my worsening condition . . . . Your conduct and your staves [sic] conduct was atrocious and grossly negligent [sic]!
- III(1) Lack of concern and improper conduct!
- III(4) Taking pictures of my injuries and not taking them seriously enough to direct help for me!

In addition to these allegations, the Amended Complaint claims that the Sheriff's staff would not allow Mr. Wright's family to visit either Mr. Wright or the Sheriff.

There is no allegation that Sheriff Hill was in any way personally involved in Mr. Wright's arrest or medical care. Indeed, the fact that Mr. Wright does not know whether Sheriff Hill should be addressed as "Mr." or "Mrs." indicates that Sheriff Hill was not personally involved in taking pictures of Mr. Wright's injuries or in any other aspect of Mr. Wright's medical treatment. There is no allegation that Sheriff Hill had personal knowledge of either Mr. Wright's injuries, or of events which should have alerted him to any injuries. There is no allegation that any other supervisory official in the Sheriff's Office had knowledge or information about, or

---

<sup>4</sup>The part of the Amended Complaint directed at Sheriff Hill is subdivided into three paragraphs, each containing a short narrative and then several numbered paragraphs. Paragraph I is entitled "The Facts Accusations, Allegations and All," Paragraph II is entitled "Continuation of Grievances and Facts," and Paragraph III is entitled "Conclusion of Facts and Accusations."



participated in, Mr. Wright's medical care. There is no allegation that Sheriff Hill had engaged in similar practices over a period of time. There is also no allegation that others within the Sheriff's Office had engaged in similar conduct over a period of time, such that it might be inferred that similar conduct had become a custom or policy of the Office. In short, there is no allegation from which it might be inferred that Sheriff Hill has any liability for the deprivation of any of Mr. Wright's constitutional rights. Therefore, the Motion to Dismiss is GRANTED as to all claims against Sheriff Hill in his official capacity.

B.

To the extent Mr. Wright is seeking relief from Sheriff Hill in his individual capacity, Mr. Wright's Amended Complaint also fails to state a claim. To establish individual liability under § 1983, a plaintiff must affirmatively show that the "official charged acted personally in the deprivation of the plaintiff's rights." Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985). In the context of a § 1983 claim alleging a violation of the Eighth Amendment, a prison official must "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference" in order to be found liable. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

The only direct responsibility Mr. Wright specifically attributes to Sheriff Hill is a general assertion, unsupported by facts, that Sheriff Hill was negligent in the supervision of the jail's medical staff. These allegations are insufficient. See

Farmer, 511 U.S. at 837; Miltier v. Beorn, 896 F.2d 848, 853 (4th Cir. 1990).

The Amended Complaint also includes allegations that Sheriff Hill's staff kept Mr. Wright's family away from both Mr. Wright and the Sheriff, but does not allege any facts to suggest that any Defendant except Dr. Bowen acted personally in the deprivation of Mr. Wright's rights at the jail or that he was otherwise aware of any substantial risk of harm to Mr. Wright.

Sheriff Hill is also not liable in his supervisory capacity for the acts of his jail staff. There are three elements for establishing supervisory liability under § 1983: "(1) that the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed 'a pervasive and unreasonable risk' of constitutional injury to citizens like the plaintiff; (2) that the supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices';<sup>5</sup> and (3) that there was an 'affirmative causal link'<sup>6</sup> between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff." Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994) (internal citations omitted). In the context of an Eighth Amendment challenge, the Fourth Circuit has held that a plaintiff may show either "that the supervisory defendants failed promptly to provide an inmate with needed medical

---

<sup>5</sup>An affirmative causal link may be supplied by ordinary tort principles that hold defendants liable for the natural consequences of their actions. Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994).

care,” “that the supervisory defendants deliberately interfered with the prison doctors’ performance,” or “that the supervisory defendants tacitly authorized” the violation. Miltier, 896 F.2d at 853 (internal citations omitted).

Mr. Wright’s Amended Complaint fails to allege facts from which any of the elements of either personal involvement or tacit authorization could be inferred. Therefore, to the extent Mr. Wright claims a § 1983 violation by Sheriff Hill in his individual capacity, the Defendants’ Motion to Dismiss those claims shall be GRANTED.

#### IV.

In addition to the federal claims discussed above, Mr. Wright may have tried to allege North Carolina state law claims.<sup>6</sup> Again, it is unclear whether Mr. Wright is bringing claims against Sheriff Hill in his official or individual capacity, so both will be addressed. Because Mr. Wright has not stated a claim against Sheriff Hill in either capacity, any state law claims against Sheriff Hill will be DISMISSED.

#### A.

A governmental entity -- the true defendant when a governmental actor is sued in his official capacity -- enjoys absolute immunity from common law tort actions unless it has chosen to waive that immunity. One way governmental

---

<sup>6</sup>Although Mr. Wright has not stated any federal claims against Sheriff Hill, the other Defendants in this action have not moved for dismissal. Because Mr. Wright may have stated federal claims against those Defendants, this Court elects to exercise supplemental jurisdiction over any state law claims against Sheriff Hill for purposes of this 12(b)(6) motion.

immunity is waived is through the purchase of insurance, but only to the extent of the monetary coverage in effect. See e.g., Mullins v. Friend, 116 N.C. App. 676, 680-81, 449 S.E.2d 227, 230 (1994). Waiver of immunity by the procurement of insurance is an element of a tort claim against a municipality and, as such, must be pled in order to state a claim. See Clancy v. Onslow County, 151 N.C. App. 269, 275, 564 S.E.2d 920, 924 (2002) (stating that "in the absence of an allegation in the complaint in a tort action against [a governmental unit], to the effect that such [unit] had waived its immunity by the procurement of liability insurance to cover such alleged negligence or tort, or that such [unit] has waived its immunity . . . , such complaint does not state a cause of action"). See also Myers v. Town of Landis, 957 F. Supp. 762, 771 (M.D.N.C. 1996).

Another way for a sheriff to waive his or her immunity exists where a plaintiff sues both a sheriff and the surety of a sheriff's bond. N.C. Gen. Stat. § 58-76-5. However, the surety of Sheriff Hill's bond has not been made a party to this suit, despite the fact that Mr. Wright has now filed three Complaints in this matter and the fact that the identity of any surety is public record. Therefore, the sheriff's bond exception does not apply. Messick v. Catawba County, 110 N.C. App. 707, 715, 431 S.E.2d 489, 494, cert. denied, 334 N.C. 621, 435 S.E.2d 336 (1993). See also, Mellon v. Prosser, 347 N.C. 568, 494 S.E.2d 763 (1998).

Because waiver of immunity has not been pled, there are no facts alleged which support an inference that Sheriff Hill has waived his governmental immunity.

Accordingly, as to any state law tort claims against Sheriff Hill in his official capacity, Sheriff Hill's Motion to Dismiss will be GRANTED and those claims DISMISSED.

B.

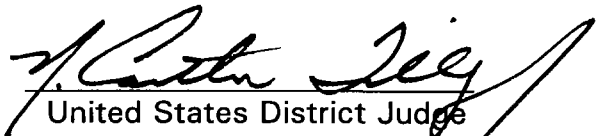
Not only do governmental entities enjoy immunity from state law tort claims, but law enforcement officers are also immune from many tort claims when sued in their individual capacities. A police officer performing his official duties is engaged in a governmental function. Mullins, 116 N.C. App. at 731, 449 S.E.2d at 230. A public employee acting within the scope of his official duties, and engaged in a discretionary function, may not be held liable for negligence in his individual capacity. See Campbell v. Anderson, 156 N.C. App. 371, 377, 576 S.E.2d 726, 730. Essentially, a police officer in North Carolina "enjoys absolute immunity from personal liability for discretionary acts done without corruption or malice." Id.

No allegations of fact in the Amended Complaint support an inference that Sheriff Hill participated directly in the injury or medical care of Mr. Wright, or that he would have derivative liability for those acts, even if he were not immune. Because there are no allegations of discretionary acts done with corruption or malice, Sheriff Hill enjoys immunity from state law tort claims in his individual capacity. Accordingly, any state law tort claims the Motion to Dismiss will be GRANTED as to Sheriff Hill in his individual capacity, and those claims will be DISMISSED.

V.

For the reasons stated above, the Amended Complaint does not state a claim against Sheriff Hill and the Defendant's Motion to Dismiss will be GRANTED.

This the 16<sup>th</sup> day of July, 2004.

  
United States District Judge